

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re VIRGINIA R., a Person Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JENNA R.,

Defendant and Appellant.

G048767

(Super. Ct. No. DP021952)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

Marsha F. Levine, under appointment by the Court of Appeal, for the Minor.

Jenna R. (the mother) appeals from the dependency court's order made at an 18-month review hearing. The court decided not to return her daughter Virginia R. to her care because doing so would be detrimental to Virginia's well-being. Orange County Social Services Agency (SSA) submitted a letter brief declining to oppose the mother's contention, yet specifically stated it would not go as far as agreeing with all of the mother's arguments. Virginia submitted a brief arguing the court's decision was supported by substantial evidence and should be affirmed. We agree and therefore affirm.

I FACTS

Detention

On November 25, 2011, Virginia, who was 11 years old at the time, was taken into protective custody by the Santa Ana Police Department. The mother had overdosed on medications and alcohol that she took while alone with Virginia. Virginia attempted to rouse the mother, but could not do so. The police were contacted and the mother was placed on a hold pursuant to Welfare and Institutions Code section 5150¹ for evaluation and treatment. She was released on November 27, and refused referrals to therapy, stating she had access to a therapist who treated her pro bono. She said she had a diagnosis of "[a]djustment disorder mixed disturbance emotional/conduct." Her drug screen indicated positive results for benzodiazepines and acetaminophen and a minimal amount of alcohol.

SSA filed a petition alleging failure to protect under section 300, subdivision (b) and serious emotional damage under subdivision (c). In the detention report, SSA stated the mother had unresolved mental health issues including depression and anxiety. She overdosed after an argument with Virginia, who had requested to move

¹ Subsequent statutory references are to the Welfare and Institutions Code.

back to Beverly S., the maternal grandmother, in Arizona. The mother chased Virginia through the home, tore up pictures, threw items at her, and tackled her in an attempt to prevent her from calling Beverly. Virginia reported that the mother angered easily, and had grabbed her by the shoulders and dug her nails into her skin. She also said the mother had hit her with a closed fist. She feared her mother and did not want to live with her. The mother denied any physical abuse.

SSA also reported the mother had unresolved substance abuse issues with prescribed and over-the-counter medications, which she did not take as directed and consumed with alcohol. Alcohol abuse was also reported. In 2010, the mother had been arrested on charges of driving under the influence and admitted the incident was an attempted suicide. She had not completed a substance abuse program. The mother also had two prior referrals for child abuse in 2008 and 2009, both in San Diego County. According to the 2008 report, Virginia had behavioral issues and was in therapy once a week with the school psychologist.

When interviewed, the mother stated that she was not trying to kill herself and that taking too many pills was a “mistake.” She denied ever stating that she was going to kill herself. Among other medications, she had been prescribed Xanax, Zoloft and Ambien. She had been diagnosed with depression and anxiety in April 2009. Virginia had lived with Beverly for some time periods until 2010, when she moved back in with the mother. The mother denied the physical abuse allegations and stated she disciplines Virginia by making her write an essay, removing privileges or sometimes “wack[ing] her on the bottom.”

Virginia discussed the incident leading to detention with the social worker. On the prior day, which was Thanksgiving Day, Virginia and her mother had “a good day” and Virginia complimented the mother’s cooking, telling her that it was as good as Beverly’s. The mother became upset when she mentioned Beverly — indeed, she said

the mother “gets mad easily about just anything” — but she became particularly upset when Virginia mentioned Beverly.

The next morning, the day of the incident, the mother told Virginia she was going to send her to live with Beverly. Virginia said she wanted to go, but then the mother changed her mind. At some point, Virginia got a cell phone because she wanted to talk to her grandmother, but the mother “went crazy,” yelling at her and chasing her to take the phone away. Virginia reported the mother said “give me the phone and I won’t take the pills,” and she gave her the phone. The mother took pills anyway at several points that day along with wine. The mother appeared drunk and slumped to the floor. Virginia could not rouse her, and eventually called her grandmother who called emergency services. Virginia said the mother had tried to kill herself when Virginia was living in Arizona, and stated the mother was “trying to [make] me feel bad and hurt me” by taking the pills in her presence. Her mother sometimes called her “bitch” and told her “you are disgusting.” Virginia also reported the mother took sleeping pills and drank alcohol every day.

Virginia and the mother had gone to therapy, and the mother had tried to turn her against Beverly. She was never happy at home, but had been happy when she lived with Beverly. She said her mother was angry all the time. With respect to physical abuse, Virginia described it as “random” and stated the mother had dug her fingernails into Virginia’s skin and hit her with a closed fist. Virginia said she knew her mother loved her, but stated “I have to take care of her, I’m never the child.” She wanted to live with Beverly in Arizona. She did not want to visit with the mother or talk to her.

SSA received a report from the mother’s San Diego therapist, who stated she had been treating the mother on and off between 2008 and 2011. She described the mother’s relationship with Beverly as “troubled.” She reported that Beverly had been very active in Virginia’s life, but was concerned that Virginia would want to go to Beverly when the mother made a decision Virginia did not like. The therapist

recommended a neutral placement to facilitate improvement of the relationship between the mother and Virginia.

The detention hearing was held on November 30, 2011. The mother submitted on the issue of detention and indicated she was willing to do any reunification services necessary. The court detained Virginia and vested SSA with custody, with authorization to release her to a suitable relative or adult. SSA was ordered to provide reunification services for the mother.

With respect to visitation, her counsel indicated that Virginia did not wish to visit with the mother. Counsel requested that any visitation be ordered with the input of Virginia, the social worker and Virginia's therapist, and requested an immediate referral to therapy.

Later in the hearing, the mother declared, in the best interest of Virginia, that she wished to terminate her rights and would not make any further appearances in the proceedings. The court explained the dependency was a process, and even if she did not appear, the proceedings would continue. The court then authorized an examination of the mother pursuant to section 730. The court ordered Virginia to remain at Orangewood until an evaluation by the clinical evaluation and guidance unit (CEGU) had been completed, ordered a court-appointed special advocate (CASA) appointed on her behalf, and referred Virginia to therapy. Visitation was to be determined with appropriate input. Liberal visitation with Beverly, as deemed appropriate by SSA, was also ordered.

Jurisdiction/Disposition

SSA's report opined that Virginia presented as "bright, wary, traumatized and parentified." While she loved her mother, she was afraid to return to her. The CEGU therapist agreed that Virginia had suffered trauma. The therapist also felt that she had a mental disorder and required treatment. She also suffered anxiety and depression, and a history of neglect. Individual and family therapy were recommended. Monitored

visitation with the mother was also recommended and implemented. An Interstate Compact on Placement of Children (ICPC) was initiated with regard to Beverly.

The visits proceeded. At times Virginia would pull away from the mother or answer questions “yes” or “no.” The social worker said on one occasion that their conversation appeared to be “awkward and without emotion.” Other visits seemed to be more positive.

During this period, Virginia had a temporary release for three days with Beverly, which “may have caused some concerns” for the mother. From the interaction between the mother and the social worker, it appeared clear that the mother did not want Virginia placed with Beverly. The mother was given referrals for services. She continued to deny all allegations of drug or alcohol abuse.

At the jurisdiction hearing, the mother entered a plea of no contest to the amended petition. The court found the allegations in the amended petition true. In an addendum report, the social worker reported the ICPC was proceeding apace. Virginia, who was experiencing some troubles with other children at Orangewood, requested a foster home placement where she would be the only child. She liked to be the only child rather than being with other children. She was placed in a foster home shortly thereafter which did have other children. Her CASA later reported she was doing well in her new placement.

The mother’s section 730 evaluation was completed. It showed diagnoses of depressive disorder, possible alcohol and drug abuse, and parent-child relational problems. The report also referred to a possible borderline personality and moderate psychological stressors, including the mother’s relationship with Virginia. The evaluator could not rule out the risk of physical abuse if Virginia were returned to the mother, but assessed it as “relatively low.” The evaluator recommended therapy, parenting classes, and an evaluation by a substance abuse specialist.

The mother's substance tests were mostly negative, with one diluted test and one positive for benzodiazepines. She had been seeing her therapist weekly and in frequent contact with her parent mentor. Visits and phone calls between the mother and Virginia continued.

In its evaluation, SSA noted that the mother had been hospitalized on holds pursuant to section 5150 at least three times since 2009. Reunification services were recommended, with intensive therapy for the mother, and Virginia and Beverly, where appropriate. Virginia should remain in her foster home for the time being, but if the mother did not progress, then she should be placed with Beverly.

At the disposition hearing, pursuant to the parties' stipulation, the court found by clear and convincing evidence that returning Virginia to the mother would be detrimental. The mother's visitation was set at six hours per week, and Beverly was authorized to visit every other week from Friday night to Sunday. Virginia was to attend therapy with the mother and Beverly (separate or jointly) when deemed appropriate by Virginia's and the mother's therapists.

Interim Reviews

In the interest of brevity, we summarize the next several review periods, eliminating some secondary issues which are not pertinent to this appeal. Virginia turned 12 in March 2012. The mother wanted to reunite with Virginia throughout. The mother and Beverly continued to have significant conflict, though over time the mother's strong negative reaction to Beverly lessened. The mother proceeded with her services. Virginia visited with both the mother and Beverly, with mixed results. At the review hearing, the court stated all prior orders remained in effect, with the mother ordered to receive at least six hours of visits per week.

During the next review period, the mother's visits returned to monitored after Virginia said her mother had accused her of lying to investigators during a visit.

The mother also told Virginia she should be calling her attorney every day to say she wanted to come home. Virginia continued to have problems with the difficulties between the mother and Beverly, and reported being pressured by Beverly. She did not like being in the “middle” between them, and she wanted the mother and Beverly to reconcile. She wanted to stay in her current foster home, absent reunification, and she did not want to live with Beverly. While she wanted to reunify with the mother, Virginia was concerned about the mother’s behaviors and actions during visits.

Virginia was in individual therapy, but she and the mother began conjoint counseling, with some difficulty. The therapist agreed the complex and tangled nature of the case was due in large part to Virginia being in the middle of the conflict between the mother and Beverly.

At the next hearing, in September 2012, services were continued. Visits with Beverly were to continue only if Virginia wanted them, on a monitored basis. The court also ordered the mother and Beverly not to disparage each other to Virginia.

In preparation for the 12-month review hearing, SSA reported that Virginia was doing well academically, but noted potential socialization problems at school. Conjoint therapy continued between Virginia and the mother, with a focus on facilitating communication. At times the therapist felt Virginia was guarded or would not engage. The mother also made progress in individual therapy. She had also made “a concerted effort on her Court ordered case plan and has been consistent with the visitation scheduled.” The mother, however, was apparently continuing to discuss the case with Virginia, telling her that parental rights might be terminated at the next hearing.

Virginia was frustrated by her mother’s plan to move to San Bernardino. She wanted to remain in her foster home, and the foster mother was willing to provide long-term foster care if reunification was unsuccessful. At other times she said she wanted to reunify. Visits generally went well. SSA recommended continued services and setting an 18-month review hearing.

In an addendum, SSA reported the mother had a “meltdown” during a therapy session. Virginia wanted to “go slower” in terms of proceeding with unmonitored visits, which was consistent with her statements to the social worker. The mother began yelling at some point, during which she accused the foster mother of brainwashing Virginia. The mother also told Virginia that she was a “liar” and “a disgusting product of the system.” The therapist felt the mother was anxious and fed up with the dependency system. Telephone calls between the mother and Virginia after this incident did not go well. The social worker reported that the following visits appeared to go well, but at several points Virginia told the social worker she only felt comfortable because she was present.

On or around January 22, 2013, the mother, who was reviewing the foster mother’s biological children’s social media postings, found evidence of alcohol use and other activities by these teenagers. The mother reported this to the social worker, and pending investigation into the foster mother’s knowledge of these activities, Virginia was moved to another foster home on January 22. Virginia was not happy about being moved and did not like her new placement. Virginia blamed the mother for what had happened, and indeed, the mother had been responsible for bringing the issue to SSA’s attention. The mother was unhappy with the therapist at the session after this move, stating the therapist questioned her empathy. The mother said visitation after the therapy session went well, but the social worker characterized Virginia as withdrawn and the visit ended early. Virginia agreed the visit went “okay,” but she wanted visits to remain supervised. She said she was concerned about her mother “talking about things.” She also said she wanted to reunify, but to take it “slow.” She “would be happy with my mom if my mom can change.” Virginia refused several subsequent visits and the mother missed a therapy session and visit. After a few weeks, visits seemed to improve, though some ended early. At the 12-month review, the parties stipulated to continue reunification services to the 18-month hearing.

In February 2013, Virginia's placement changed due to her caretaker's family obligations, and she was temporarily placed at a care facility pending a new placement. On March 15, at the 15-day review hearing regarding this change, Virginia was told that despite her wishes she would not be returning to her first foster home. According to the mother's counsel, Virginia was refusing visits and conjoint therapy. The court spoke to Virginia directly that the case was about her welfare and safety, and not a contest between she and her mother. Virginia said she was "not going to do reunification" with her mother, or go to conjoint therapy. She would, however, participate in therapy on her own.

The court said it would request a statement from her therapist about her progress, and in response to the mother's counsel's assertion that "a 12-year-old [is] running the show here," the court responded, "we're not done, counsel," and said words to the effect that more than one possible approach to the situation was possible. The court told Virginia that the more she was open to engaging in the process in a meaningful way, the more her desires would be considered. The court suggested that letters from the mother to Virginia might be a bridge to resuming conjoint therapy. While the mother's counsel felt strongly that visitation was critical leading up to the 18-month review, the court was concerned that this process does "not create something akin to an emotional cancer," which could be very damaging to Virginia. The court then ordered the mother prepare a letter to Virginia to be discussed in a therapeutic setting, with joint sessions to follow. The court also ordered to Virginia to prepare a letter to the court explaining why she did not want to reunify. Virginia was also to participate in individual counseling.

Trial Release

On March 26, 2013, SSA filed an ex parte application advising the court that it intended to begin a 60-day trial release between Virginia (who had just turned 13) and the mother on April 2. SSA reported that Virginia had attended a conjoint therapy

session on March 2, which had succeeded in lightening the mood between Virginia and the mother. A week later, however, Virginia did not wish to talk to or see the mother, and the same occurred at the next session. The therapist did not see any safety concerns present in a trial visit, and she believed the child should be returned to the mother.

Virginia confirmed to the social worker that she did not want to visit or take steps to reunify. She said she was not mad at the mother, but was upset, and felt that the mother was “going behind peoples backs and not sure what she is telling me is a lie or not.” She did not want to have a trial visit with the mother. She said the mother “is not ready,” and “[t]here isn’t anything you can do to make me want to go back.” She said she wanted to be in long-term foster care.

At the court hearing on March 26, Virginia’s counsel requested the court decline to authorize the trial release. The mother’s counsel argued acquiescing to Virginia’s wishes was “reinforcing this child’s willful disobedience” and that she was “running the show and there’s nothing anyone can do about it.” The mother’s counsel argued that it needed to be communicated to Virginia that “yes, something can be done about it.” SSA agreed with the mother that the release should be authorized. Virginia’s counsel disagreed, stating there was a safety concern given that she was not emotionally ready to be placed with the mother, Virginia could do something impulsive or put herself in harm’s way. Counsel requested the matter be decided in 10 days and any release be delayed until then. The court agreed. Shortly thereafter, Virginia was moved from a care facility to a new foster home.

On April 4, a hearing was held on the proposed trial release. Virginia’s request to not proceed with a trial release was treated as an oral motion under section 388. The social worker testified that the reason for the trial release was the mother’s successful completion of her case plan and the agreement of the therapist that no safety issues were present. The therapist had opined that Virginia was “deteriorating” due to removal from her first foster home and symptoms of this were her refusal to visit and

participate in therapy. Virginia had not been able to articulate to the social worker why she did not want the trial release, other than that the mother had good days and bad days. It was difficult to assess whether Virginia was angry with her mother or if there were other reasons. There was a concern that the trial release would fail based on Virginia's emotional state. The social worker felt that prior to Virginia's removal from the initial foster home she did want to reunify with the mother, but afterward she did not want to. She believed Virginia felt the mother was sabotaging her placement. The social worker wanted conjoint therapy to coincide with the trial release.

Overall, the social worker felt that because the mother had completed the case plan and addressed the issues leading to dependency, it was time for Virginia to reunify with her. When questioned by the court, the social worker opined that from Virginia's standpoint, there was an ongoing emotional issue due to her removal from her first foster home, where she had been placed for almost a year. The change in placement had been another loss for her. Given Virginia's feelings about the matter, the social worker felt the trial release would be a "struggle" for her and a "challenge" for the mother. The trial release, if it proceeded, would likely involve a change in schools for Virginia which would present another difficulty.

Virginia testified next. She did not want to start a trial release. She did not feel safe about returning to the mother. During unsupervised visits, the mother had made her feel uncomfortable by talking about her foster placement and "acting like I was lying." Some visits were bad, others were good. She also was afraid to change schools, stating that she did well at the school she was currently attending. She felt the mother did not necessarily do what was best for her or what she wanted, or decided against Virginia's desires for no reason. Virginia thought the mother should "start helping me try to focus on other things than just putting me through all this trauma, trying to go back home when I don't want to." She did not think returning to the mother was in her best interests.

Virginia had not visited the mother much since she had been removed from her first foster home. She had been refusing conjoint therapy, but she had gone to the appointment the prior weekend to tell the therapist she did not want to participate. At the team decision meeting on the trial release, she had told the participants that she did not want the release because “I haven’t seen any change over the visits and I don’t think she wants what’s best for me, but she just does what she wants.” She was willing to attend conjoint therapy again if a new therapist was assigned, because she felt the current therapist leaned toward her mother rather than “being more fair and having an open mind to both sides.” She had begun individual therapy.

Things were good at her current foster home, and she wanted to stay there. She felt the mother had taken away some of the people she could talk to, such as her first foster mother and her first social worker. If she returned to the mother and something went wrong, she would not know what to do. She would not want to tell social workers because then she would go back to Orangewood or somewhere else, and she would be in a “bad situation.” She did feel she could talk to her new therapist about her problems. The mother did not help her cope with her problems, but instead added new ones and made things worse. She couldn’t talk to the mother because she often got mad very quickly, brought up past subjects and started to scream once things went wrong. Virginia felt the mother thought about herself more than she thought about her. She had not seen any change in her mother over the past year.

She had wanted to reunify with the mother at some point, but after she left her first foster home, she felt the mother was “inconsiderate of my feelings and wouldn’t show that she cared about how I was feeling.” She wanted to stay in her current placement. She loved her mother and knew her mother loved her “in her own way,” but at the current time, she did not even want to visit. She believed that if she found someone she really cared about, like her first foster mother, the mother would be jealous and try to make trouble. If the court directed her to go on the trial release, she wanted to remain at

her current school until she finished eighth grade, and she wanted to visit with her initial foster mother.

The mother also testified. She felt her relationship with Virginia had broken down over the removal from Virginia's first foster home. She acknowledged Virginia's feelings, and stated that Virginia's needs always came before her own. She admitted that in the past she had blown incidents out of proportion. She had made changes in the past year, including not to react to things and to separate herself from criticism such as Beverly's. She said she would cope with a teenager who did not want to return to her care with openness and acceptance. If Virginia did not return to her care, she would be agreeable to having her for weekend periods. She had a private therapist who was willing to take calls whenever needed once Virginia was home. She felt Virginia would be "fine" if she came home for the trial release.

When questioned by minor's counsel, the mother briefly restated the incident that had led to detention. She minimized the incident, characterizing her overdose as a "mistake," and failing to mention her heated interaction with Virginia. She felt Virginia "believed" the claims she made at the outset of dependency, but suggested her statements were due to Beverly's influence. With respect to Virginia's first foster mother, the mother said she was worried that Virginia's attachment might be "Stockholm Syndrome." She acknowledged that Virginia had feelings of loss and separation anxiety, and when asked how she would address them, the mother said she would seek a "pediatric neuro evaluation."

After argument by counsel, the court stated that the mother's testimony had persuaded it that SSA had abused its discretion in ordering a temporary release. "The court would note that [the] mother does not seem to have an appreciation for the depths of Virginia's emotional needs, and there does not seem to be in place any meaningful plan for her to deal with those needs." The court also noted that the mother's support systems seemed primarily focused on her needs rather than Virginia's. The mother

seemed “to go a long way to place responsibility for the emotional damage . . . externally, and does not seem to accept any . . . but minimal responsibility for her own part in the relationship with her daughter.” Thus, the court found that return would pose a substantial risk of emotional harm to Virginia. The court directed an independent conjoint therapist be used in the case, and directed SSA to evaluate the staffing of the case to attempt to provide a worker with whom Virginia could establish a level of trust. The focus of the case remained on reunification.

At the conclusion of this hearing, the mother was very upset. As it was later described, she stormed out of the courtroom, in Virginia’s presence, in a very angry manner and using profane language.

18-Month Review

In preparation for the May 18 hearing, SSA reported that the mother continued to be generally cooperative, and her progress in her case plan was substantial. She continued to attend individual therapy, and her therapist felt she was internalizing what people were telling her regarding listening to her daughter and being less defensive. A substance abuse evaluation was completed and the evaluator determined there was no indication of alcohol or drug abuse. Drug testing was discontinued.

The mother and Virginia had been referred to conjoint therapy, and first each had individual sessions with the therapist. They had one conjoint session which the therapist described as very positive. A second session shortly before the hearing was more difficult, as the mother was “deflated” when Virginia asked the mother not to request her return at the hearing.

Virginia was doing well in her foster home, but the foster parents informed SSA that they were not available as a long-term placement resource if reunification was unsuccessful. She was attending individual therapy. The therapist was not sure that Virginia trusted her. Virginia continued to have anger toward the mother regarding the

removal from her first foster home, and the therapist was concerned she was fixated on this issue. She recommended personality testing. An evaluation was scheduled for after the 18-month review hearing.

Virginia continued to refuse to visit with the mother. She told the social worker she did not want to reunify, and continued to hope to be reunited with her first foster mother. SSA felt the mother's compliance with the case plan warranted returning Virginia to the mother.

With respect to the hearing, we shall attempt to summarize the relevant testimony without repeating the statements elicited at the trial release hearing just a few weeks prior, as much of the testimony was similar. The social worker felt the mother had addressed the issues leading to dependency. She also reviewed Virginia's history of refusing to visit and the attempts to begin individual therapy. The social worker believed there were no safety concerns with returning Virginia to the mother, and she recommended continuing individual and conjoint therapy, among other services. Virginia was aware that she could not remain in her current foster placement for the long term, but nonetheless, she told the social worker she did not want to reunify. The social worker believed that Virginia's feelings about her mother — her lack of belief that her mother was acting in her best interests and her disbelief that her mother had changed — could continue to be addressed in therapy.

The social worker was also aware that at the trial release hearing, the mother minimized her part in detention, but felt that in the prior five weeks the mother, according to her therapist, had reached a point where she took responsibility for Virginia's removal. The therapist reported the mother had "made great strides" since the previous hearing. The mother had worked on her parenting skills and was attending individual counseling. She had acknowledged that she was a "contributor" to the problems between her and Virginia. She had also made progress in listening, and controlling her anger and affect.

The social worker acknowledged that if Virginia were to return home, she would be upset. The most extreme reaction would be Virginia running away, or making allegations regarding the mother. What would happen if Virginia returned home was dependent both on Virginia's reaction and the mother's reaction to Virginia.

The therapist who evaluated Virginia and saw her from May 2012 to February 2013 testified next. Virginia had been guarded at times. The therapist's goal was to help Virginia in the difficult period after detention. The therapist opined Virginia had suffered from anxiety and posttraumatic stress disorder. She was uncertain whether it was removal from the home or the events leading to the removal that caused posttraumatic stress. She felt removal had caused the anxiety.

The mother's direct supervisor at her job also testified regarding the mother's pleasant demeanor, lack of a bad temper, and positive attitude. The mother had acknowledged to her supervisor that there were reasons for detention. The mother had told her she did not feel bitter toward Beverly.

The mother's therapist testified in a manner generally consistent with the social worker's testimony and SSA reports. She had seen Virginia once individually and 11 times in conjoint sessions between October 2012 and April 2013. Prior to Christmas 2012, Virginia had expressed a desire to return home, and therapy had gone well. The relationship between Virginia and the mother had improved. On January 5, 2013,² Virginia had asked to speak with the therapist alone and said she wanted reunification to slow down. The mother was very upset when she heard this, but became more understanding in subsequent sessions. But Virginia became more distant and withdrawn, and more resolute that she did not want to reunify. In April 2013, Virginia told the therapist that she did not understand where she was coming from, and declined to participate in additional therapy. The therapist felt Virginia might be getting information

² This predates her removal from her first foster home.

about the case from someone else, as she sometimes used language that was not what one would expect from someone her age.

With respect to the mother, the therapist believed she had adequately addressed the reasons for detention. The mother “accepts responsibility for the events that took place that evening and admits that she made a huge mistake,” referring to the evening that led to detention. She felt the mother had developed empathy toward Virginia after having initial difficulty in this area. The mother had also come to terms with Beverly and gained insight into her own behavior and how it affects Virginia. She felt this improvement had been significant since the court hearing on the trial release. The mother had also worked on coping mechanisms for anger, and her listening skills had improved. She had become less defensive and more accepting. The therapist believed the mother could provide a safe home and she did not see a risk of abuse. She felt the mother was willing to work hard to make reunification a success.

On cross-examination, when asked about the mother’s statements about the events on the night Virginia was detained, the therapist said: “[The mother] felt it was exaggerated, that she was not held on 5150 . . . she did admit mixing pills with alcohol, she denies being unresponsive, she made an effort to have Virginia picked up and cared for.” She denied tackling Virginia. The mother denied there was an incident where she had grabbed Virginia by the shoulders and dug her nails into Virginia’s skin, or that she had hit Virginia with a closed fist. The mother also denied threatening to overdose to try to hurt Virginia. The mother felt Virginia was being manipulative and they had been having a power struggle. The therapist admitted the mother denies “the severity of the allegations” in the dependency petition. Nonetheless, she opined that the mother had made sufficient progress to warrant placing Virginia back in her care.

At the conclusion of testimony, which did not include new testimony from either Virginia or the mother, the mother and SSA argued the court should return Virginia to the mother. Virginia’s counsel argued that return would create a substantial risk of

detriment to Virginia's physical and emotional well-being. Counsel argued the mother's dramatic changes over the past several weeks were less a result of internalizing needed lessons and more the result of the mother being "smart enough to get the picture" with regard to her statements and behavior.

The court described aspects of this case as "troubling." "If Virginia can be said to exaggerate [as] has been argued and the court would observe that the mother can certainly minimize and that therein lies a very, very bad combination in terms of trying to accomplish a meaningful dialog." The court was concerned that even after January, when things went wrong between the mother and Virginia, "it seemed to be a casting about and seeing to make an assessment that if Virginia did not want to go home then the problem was Virginia's."

The focus of the court's concern was Virginia's emotional stability. It was concerned that when there was a conflict between them, the mother's default position seemed to be that Virginia was the problem. The court continued to believe that the mother minimized her responsibility for detention. The court's "concern . . . is the ability of [the] mother to meaningfully engage Virginia given Virginia's needs. And the court would note that the blame game is still . . . outstanding." The court found the mother to be inflexible "with reference to her positions and her conduct as particularly as it relates to Virginia." While the mother had been participating in therapy as ordered, "what the court is looking for is . . . a meaningful engagement of the issues that brought this matter to the point of where it was necessary to have Virginia removed." The court was concerned that if it were to order a return, it would be creating an "emotionally volatile situation," and attributed that to the mother's intransigence with respect to Virginia's emotional and social vulnerability. The court stated that returning Virginia could result in "intrinsic emotional damage" that could manifest itself in a variety of ways, including running away. The court was prepared to make a finding that additional services would

be appropriate, and after hearing argument, ordered services and set a further review for November 25. Virginia was to remain in foster care. The mother filed the instant appeal.

II

DISCUSSION

A. The Mother's Request to Preclude Virginia from this Appeal

The mother argues that because Virginia refused to participate in conjoint counseling or visitation in compliance with the court's orders, she should be precluded from participating in this appeal under the doctrine of disentitlement. Under that doctrine, "[a] party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]" (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277; see also *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, 1227-1229.) Thus, "a court may refuse assistance to a party who fails to comply with a court order" (*In re C.C.* (2003) 111 Cal.App.4th 76, 84.) On appeal, it "is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction" (*People v. Puluc-Sique* (2010) 182 Cal.App.4th 894, 897.)

As Virginia points out, however, the doctrine is generally applied only to appellants who have willfully refused to comply with a court order. "In dependency cases, the doctrine has been applied only in cases of the most egregious conduct by the *appellant*, which frustrates the purpose of dependency law and makes it impossible to protect the child or act in the child's best interests. [Citations.]" (*In re E.M.* (2012) 204 Cal.App.4th 467, 474, *italics added*.) Thus, the purpose of the doctrine is to bolster the court's ability to protect the child's best interests, and we therefore do not think it is appropriate to use it to preclude a 13 year old from participating in proceedings that gravely impact her. Moreover, the mother does not cite any cases where it has been

applied to a minor in a dependency proceeding to prevent them from participating. We decline to exercise our discretion to apply this doctrine here.

B. Standard of Review

Pursuant to section 366.22, subdivision (a), at the time of an 18-month review, “the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) SSA generally has the burden of proof of establishing detriment. This court then reviews for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.)

“The standard for showing detriment is ‘a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.’ [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child’s physical or emotional well-being. [Citations.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.)

“‘In juvenile cases, as in other areas of law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.’” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) We review the evidence in the light most favorable to the trial court’s finding and draw all legitimate and reasonable inferences upholding such a finding. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Further, “[i]t is the trial court’s role to assess the credibility of the various witnesses, [and] to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

C. The Mother’s Compliance with the Case Plan

In determining whether it would be detrimental to return a child to the parent at the 18-month review hearing, one factor the court must consider is whether the parent participated in and made substantial progress in a court-ordered services, the “efforts or progress” of the parent, and the “extent” the parent “availed himself or herself of services provided.” (§ 366.22, subd. (a); *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341.)

There is no serious question that the mother successfully checked off the boxes by completing the different elements of her service program. The court said as much during the hearing. SSA said she had done so, and her therapist said she had improved, showing significant improvement since the prior hearing, when she had stormed out of the courtroom in front of Virginia. The mother argues that Virginia’s counsel agreed, quoting the comment: “I think Mom is smart enough to get the picture,” although given the context of this statement, we do not ascribe the same meaning to it the mother does. Counsel seemed merely to be implying the mother knew she had to control herself to have Virginia returned, not that her issues had genuinely been resolved.

While the mother only argues the evidence that supports her desired outcome, there was also ample evidence to the contrary. The mother continued to

minimize the events of the night Virginia was detained, and had continuing issues with anger and appropriate behavior in Virginia's presence that were on display as recently as the prior court hearing.

The social worker acknowledged that Virginia would be "upset" if she were returned home, which could lead to acting out in a variety of ways, including, in the worst-case scenario, running away. The social worker stated no assessment had been done with the regard the potential damage to Virginia should that scenario manifest. She also acknowledged that there were still outstanding issues in the case, specifically, the emotional interplay between Virginia and the mother.

With regard to the mother's therapist, she testified the mother continued to deny allegations of physical abuse. The mother had never said, during conjoint therapy with Virginia, that she took responsibility for the past. The mother denies "the severity of the allegations" in the sustained petition. Nonetheless, the mother was determined to make reunification work. The therapist nonetheless opined that the mother had made sufficient progress to warrant placing Virginia back in her care.

While the court did not disregard the mother's therapist's opinion out of hand, it did note that the therapist was also, by her own admission, an advocate for the mother. The court expressed concern that the mother had done what was asked of her without truly addressing some of the issues that led to dependency. The court said the therapist had failed "to engage in a dialog which confronts the finite facts as opposed to recasting those facts in a perspective which, again, minimizes the events in question and the mother's responsibility. [¶] [W]hat the court is looking for [in therapy is] a meaningful engagement of the issues that brought this matter to the point of where it was necessary to have Virginia removed."

The court, therefore, assigned the therapist's assertions of a sudden turnaround in the prior few weeks what it felt was the proper weight, and we are not here to second guess such determinations. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-

53.) Further, it was undisputed that because the mother had persistently denied the allegations of physical abuse in the sustained petition, nothing had been done to address that issue.

Thus, while it was undisputed that the mother had complied with her service plan to the extent of consistent attendance and participation, there was also substantial evidence to support the court's conclusion that all of the issues that led to dependency had not been fully addressed to the extent they would permit the mother and Virginia to successfully reunify. The mother's argument attempts to turn the substantial evidence standard on its head, essentially arguing there was sufficient evidence to support her point of view. But the court disagreed, and that conclusion — the only one we are concerned with here — was supported by substantial evidence, when the weight and credibility the court deemed appropriate was given to the relevant evidence. The court felt that to facilitate a successful reunification, conjoint therapy was necessary. Since the breakdown in the relationship between Virginia and the mother, conjoint sessions had stopped, and had only started to resume with a new therapist. Therefore, the court ordered services to continue, and its decision to do so was within the court's discretion.

D. Substantial Risk of Detriment

In reviewing for substantial risk of detriment under section 366.22, subdivision (a), “we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court's order. [Citation.]” (*In re Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1401.) The mother argues that Virginia's anxiety and resistance to returning to the mother is not sufficient to sustain a detriment finding.

We will address the mother's authority in a moment, but first, we must disagree with the premise upon which her argument rests — that the court decided not to return Virginia based on her “anxiety” and “resistance.” The record reflects otherwise. The court stated it was “concerned and will find that if the court were to order a return,

the court would be . . . creating a volatile situation, the emotionally volatile situation. And the court is going to attribute that to what the court would find to be intransigence of mother with reference to Virginia and Virginia's emotional vulnerability and social vulnerability." At another point, the court "has a concern that there would be an intrinsic emotional damage to returning Virginia to her mother at this time. That . . . intrinsic emotional damage . . . could manifest itself in a variety of ways and running away and other injurious behavior." The court did not mention at any point either generalized "anxiety" or "resistance" on Virginia's part as a reason for not returning her to the mother's custody. Thus, the mother's argument is based on a faulty premise.

Moreover, the cases she relies on are simply not on point. She refers to *In re Patrick S.* (2013) 218 Cal.App.4th 1254 (*Patrick S.*). In that case, the child, then 14, had not lived with the father, a noncommissioned naval officer, since the child was 11 months old. (*Id.* at p. 1256-1257.) When the child was 13, he was detained due to his mother's mental health issues. (*Id.* at p. 1257.) The father, by that time, lived out of state with his family. (*Id.* at p. 1262) To summarize, the child did not want to live with his father because he loved his school and did not want to be involved with his father's religion. (*Id.* at p. 1259.) Based on a number of factors, the trial court found that placing the child with this father would be detrimental to his emotional well-being, including adjustment disorder, the child's anxiety about living with this father, and the child's wishes. (*Id.* at pp. 1260-1261.)

On appeal, the court reversed, concluding that "where a child has a fit parent who is willing to assume custody, there is no need for state involvement unless placement with that parent would create a substantial risk of detriment to the child. (§ 361.2, subd. (a).) When the parent is competent, the standard of detriment is very high." (*Patrick S., supra*, 218 Cal.App.4th at p. 1263.) Based on the record, there was "no doubt that Patrick is a competent, caring and stable parent. He was dedicated to serving his family, his community and his country. He had no criminal history, no

referrals to child welfare services and no indication of substance abuse or mental illness.”
(*Ibid.*)

The point of distinction here is obvious, and contrary to the mother’s argument on reply, important. She asserts that the “only thing different in the present case is [the mother] completed her service plan to become a fit parent.” She is wrong. In *Patrick S.* (and in the similar case she relies upon, *In re John M.* (2006) 141 Cal.App.4th 1564), the parents seeking placement had absolutely nothing to do with the circumstances that led to dependency. They were, in dependency parlance, “nonoffending.” Here, it is the offending parent that seeks a finding of no detriment, but she is in a very different situation than a nonoffending parent, and the facts the court relied on are far more than generalized anxiety about moving to a new place or living with an unfamiliar person. The history between the mother and Virginia is the source of the problem here, which is entirely different from the situation in the cases upon which the mother relies. They are simply inapposite. As for the mother’s statement that she “completed her service plan to become a fit parent,” that is a conclusion, not an argument.

There was substantial evidence here from which the court could find a risk of serious emotional detriment to Virginia. Much of it we have already discussed in the context of the mother’s completion of her service plan. But the court had other evidence to consider, including the mother’s testimony just a few weeks prior to the 18-month review, at which she revealed herself to be completely unprepared to resume custody. She continued to minimize the incident that had led to detention, characterizing it as a “mistake.” She believed Virginia had, in essence, lied under Beverly’s influence. She characterized Virginia’s attachment to her first foster mother as “Stockholm Syndrome” and when asked about how she would address Virginia’s feelings of loss and separation, she said she would seek a “pediatric neuro evaluation.” It was clear from this testimony that the mother was unable to admit her role in what had occurred, and just as

importantly, she was utterly unprepared to deal with Virginia's emotional needs on a day-to-day basis.

While her therapist testified that the mother had made great strides since that hearing, the court was nonetheless entitled to give this testimony significant weight. As the court noted, the mother seemed "to go a long way to place responsibility for the emotional damage . . . externally, and does not seem to accept any . . . but minimal responsibility for her own part in the relationship with her daughter." At the conclusion of that hearing, the mother stormed out of the courtroom, in Virginia's presence, in a very angry manner and using profane language. This behavior, we are sure, did nothing to convince the court it had reached the wrong conclusion.

In sum, when taken with Virginia's testimony, the court had more than substantial evidence from which it could conclude that returning Virginia would be substantially detrimental to her emotional well-being. It was clear from the evidence that Virginia had suffered greatly from her experiences in her mother's care, and she was adamant about not returning to her custody because she had not seen any change in her mother during detention. While she loved her mother and knew her mother loved her "in her own way," she did not want to reunify. (See *In re Joseph B.* (1996) 42 Cal.App.4th 890, 893-894.)

E. Virginia's Purported Contempt of Court

In a two-page argument, the mother argues the court "erred in not finding Virginia in contempt of the court's visitation and service plan orders." She then discusses the importance of visitation and argues it could have made a significant difference in this case. What she does not indicate is where in the record she ever asked the court to consider a contempt order. Nor does she offer any case law supporting the

idea that holding a minor in contempt during dependency proceedings is proper.³ Indeed, as the California Supreme Court has cautioned against using contempt as a sanction against *parents* in dependency proceedings for failure to comply with court orders designed to facilitate reunification (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1238), we seriously doubt that contempt sanctions against a dependent *child* for similar actions are appropriate in nearly any circumstance.

F. Delegation of Authority

Finally, the mother argues the court’s “de facto delegation of whether visits would occur . . . violated the separation of powers doctrine and was an impermissible delegation of power and authority.” First, the legal significance of this argument is unclear to us. Even if we did accept the mother’s argument, she does not argue that this type of error alone requires returning custody to her, and certainly, this could not be the result. It seems rather to support an argument that she did not receive adequate reunification services, because visits, as the mother argues, are generally part and parcel of reunification. She does not make such an argument elsewhere; indeed, she argues that services offered were “completely reasonable” and she succeeded in fulfilling her service plan’s expectations. Therefore, we are unclear about what the mother expects to result from this argument, should it succeed.

In any event, it does not. The mother’s argument is supported by case law stating courts cannot entirely delegate their authority regarding visitation to individuals such as legal guardians. (See, e.g., *In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1164.) There is no indication as a factual matter that is what occurred here. The court set specific visitation orders, and delegated certain specific visitation issues to SSA, which is entirely proper. Both SSA and the other individuals involved, including foster parents,

³ The mother does not suggest what she believes would be an appropriate sanction for a 13 year old’s purported contempt.

attempted to facilitate those visits. At no time did the court say that visitation would occur only at Virginia's pleasure. (Cf. *In re S.H.* (2003) 111 Cal.App.4th 310, 316 [court did not order frequency or length of visits, and gave complete discretion to children].) Thus, the mother's "delegation" argument is misplaced.

III

DISPOSITION

The court's order is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.